IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting.

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1172 (S/S) of 2006

Date of decision: 06-09-2006

~~**A.F.R. (Approved for reporting)**~~

Not approved for reporting

Date:- 06-09-2006 Initial of Judge

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put up before Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 1172 (S/S) of 2006

Smt. Vimla Sharma (C.P. 203)
W/o Sri Ved Prakash Sharma
R/o Presently posted at Police Line, Chamba, Tehri Garhwal
R/o Police Line, Race Course Room No. 100
District Dehradun … Petitioner

Versus

1. State of Uttaranchal
through its Secretary, Home, Civil Secretariat
Uttaranchal (Dehradun)
2. The Deputy Inspector General of Police Garhwal Range, Dehradun (Uttaranchal)
3. The Senior Superintendent of Police Dehradun
District Dehradun
4. The Superintendent of Police Tehri Garhwal
District Garhwal … Respondents

Mr. B.M. Pingal, learned counsel for the petitioner.
Mr. N.P. Sah, learned Standing Counsel for the respondents/State

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

> "i) To issue a writ, rule, order or direction in the nature of certiorari for quashing and setting aside the impugned order dated 06.01.2006 and 10.01.2006 passed by the respondent No. 2 and 3 (Annexure-5 to writ petition) transferring the petitioner from District Dehradun to District Tehri Garhwal.
>
> ii) To issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to further transfer the present petitioner from District Tehri Garhwal to District Dehradun so that she could continue her treatment of acute cervical problem.
>
> iii) To issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case.
>
> iv) To award cost of the writ petition in favour of the petitioner."

2. The petitioner is working as a Constable in the police department. The petitioner was posted at Dehradun and thereafter she was transferred to District Tehri in the month of January, 2006. Thereafter, she filed a writ petition before this court in which direction was made to decide the representation of the petitioner in view of the facts and circumstances in a sympathetic manner within a period of one month. Pursuant to the above direction of the Court, the representation was preferred before the respondents and the same was dismissed on 16.03.2006 and in the meantime she joined the services in district Tehri. In the meantime, the petitioner had seriously fell ill for acute cervical problem and she had to undergo a major operation and she is not in a position to travel and work in the hill region. It was further alleged that she had to undergo a regular treatment, as such, her transfer order may be cancelled and she may be posted in a place where the medical facilities are available and she had subsequently prayed that she may be posted at Dehradun so that the doctor who had conducted the surgery may supervise during her posting at Dehradun.

3. Heard Sri B.M. Pingal, learned counsel for the petitioner, Sri N.P. Sah, learned standing counsel for the respondent/State and perused the record.

4. Learned counsel for the petitioner contended that while joining at her transfer place at Police Line Tehri Garhwal, she moved representation dated 01.06.2006 indicating her ailment and hardship but no heed was paid to her grievances. So the impugned transfer order passed by the respondents is liable to be quashed on the ground medical illness. Learned counsel for the respondent refuted the contention. It is

settled position of law that the court should not interfere with the transfer order which is made under the public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with order; instead affected party should approach the higher authorities in the department. In the case **Union of India and others Vs. S.L. Abbas** reported in **(1993) 4 SCC p/357**, the respondent was working at Shillong and his wife was also working there in the Central Government. The respondent was transferred from Shillong to Pauri in the hills of Uttaranchal. He challenged the transfer order before the Central Administrative Tribunal (CAT) on medical and also on the ground of guidelines contained in Government of India order. The Tribunal allowed the petition and quashed the transfer order. The Hon'ble Apex Court allowing the appeal held that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of the transfer is vitiated by malafide or is made in violation of the statutory provisions, the court should not interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guideline issued by the

Government does not confer upon the government employees' legally enforceable right in the court. The court while sitting in writ petition under Article 226 of the Constitution of India had a limited jurisdiction of a judicial review. The government order can only be disturbed by this Court if the statutory requirements had not been fulfilled or the malafide had been established against the officer who had passed the order. (See **Shilpi Bose (Mrs) and others Vs. State of Bihar and others** reported in **1991 Supp (2) SCC p/659,** same view has been reiterated in **Major General J. K. Bansal Vs. Union of India and others** reported in (2005) 7 SCC p/227). It has been held in Major General J.K. Bansal (Supra) that the scope of interference by the court with regard to the armed forces is very limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made. In the matter in hand, there is no violation of any mandatory statutory rule or there was no malice.

5. In view of the foregoing discussion, this writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. Cost easy.

6. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

06th September, 2006
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